**CHAN KAI KAH & ANOR.**

**v.**

**TAN KENG KOH**

COURT OF APPEAL, SINGAPORE
T KULASEKARAM J
LAI KEW CHAI J
FA CHUA J
[CIVIL APPEAL NO. 6 OF 1982]
22 NOVEMBER 1982

***LAND LAW:*** *Claim for possession of premises - Whether premises subject to Control of Rent Act (Cap. 266) - Onus of proof.*

The appellants (plaintiffs), purchasers of the land and the premises thereon, commenced proceedings for possession of the premises. The defendant claimed that the said premises were within the purview of the Control of Rent Act (Cap. 266) "the Act" as they were built prior to September 1947, and claimed protection under it.

**Held:**

**[1]** The onus of proof was on the plaintiffs, the landlords, to prove that the premises were not subject to the Act (*Leong Yoong v. Lee Sem Yoong* [1968] 2 MLJ 72), and the trial Judge was well aware of this.

**[2]** On the balance of probabilities the plaintiffs had discharged the burden of proof that the premises were built after the relevant date. The defendant had to prove otherwise, but had failed to do so.

*[Appeal allowed.]*

**Cases referred to:**
*Dadhi Ral Yado v. Mukat Rai [1958] 24 MLJ 193*
*Leong Yoong v. Lee Sem Yoong [1968] 2 MLJ 72*

*For the appellants - Kirpal Singh*
*For the respondent - Mohan Singh*

**JUDGMENT**

**T Kulasekaram J:**

This appeal arises from a claim for possession by the appellants (plaintiffs) against the respondent (defendant) of the premises known as No. 215-D, Balestier Road, Singapore, (the said premises) in District Court Summons No. 1937 of 1980. The District Judge gave judgment for the appellants for possession of the said premises. The respondent appealed and the High Court allowed the appeal. The appellants appealed to this Court. We allowed the appeal and now give our reasons.

The plaintiffs purchased the land and the said premises thereon on 30 September 1969. They commenced proceedings for possession of the said premises against the defendant. The plaintiffs pleaded that they were not precluded by the Control of Rent Act (Cap. 266) (the Act) from recovering possession of the said premises. At the trial the defendant claimed that the said premises were within the purview of the Act and claimed protection under it, having occupied the said premises prior to September 1947. He abandoned all the other defences pleaded in his defence.

One of the defendant's grounds of appeal before the High Court was that:

> The learned District Judge was wrong in law and in fact in failing to consider that on the evidence adduced by the plaintiffs, the plaintiffs had not discharged the burden of proof, the onus of which was on the plaintiffs, to prove that the premises were not subject to the Control of Rent Act and deciding the case on the basis that the burden of proving that the premises were within the Control of Rent Act was on the defendant/appellant.

The learned High Court Judge said in his judgment:

> Now, it is well settled law that in proceedings for possession of premises it is for the plaintiff (landlord), and nor for the defendant (tenant), to prove that the premises in respect of which possession is being sought is outside the protection of the Act, see *Dadhi Ral Yado v. Mukat Rai* [1958] 24 MLJ 193. The plaintiffs in the District Court called three other witnesses beside the 1st plaintiff himself.

The learned Judge then outlined the evidence of the witnesses and continued:

> From the evidence of all these four witnesses it seems clear to me that the plaintiffs had not discharged their burden of proof.
>
> It is quite apparent from a reading of the judgment of the learned trial Judge that he approached the whole case as if the burden of proof was on the defendant and not on the plaintiffs. His whole judgment deals with the evidence adduced by the defendant. Nowhere does he say anything about the evidence led by the plaintiffs in the case before him.
>
> I allowed the appeal for the reason that the learned trial Judge had not addressed his mind to the question of the burden of proof in such proceedings being on the plaintiffs (landlords) and not on the defendant (tenant).

It was not in dispute that the onus was on the landlords to prove that the said premises were not subject to the Act. The case of *Leong Yoong v. Lee Sem Yoong* [1968] 2 MLJ 72 was cited to the trial Judge who was well aware that the burden of proof lay on the plaintiffs.

The learned High Court Judge erred in holding that "the trial Judge approached the whole case as if the burden of proof was on the defendant and not on the plaintiffs".

The trial Judge had before him the evidence of:

(a) PW1 - clerical officer, Property Tax Department, that the defendant applied on 10 October 1957, for a number to be given to the said premises and the number 215-D was given; that the application for a house number was to apply for water supply and that the said premises was first assessed for property tax on 1 January 1958.

(b) PW2 - Senior clerk, Public Utilities Board, that there was a consolidated account of the said premises in the name of the defendant for water and electricity; that the water account was opened before 27 May 1958, and that it was a non-domestic commercial account.

(c) PW3, clerical officer, National Registration Office, that the first address recorded on the defendant's identity card on 31 October 1948, was 265B, Changi Road and that it was changed to 265 Changi Road on 10 January 1953; that on 7 February 1958, it was changed to the said premises and that on 14 September 1976, it was charged to Apartment Block 316, No. 1389A Avenue 1 Ang Mo Kio.

On the balance of probabilities the plaintiffs had discharged the burden of proof which was on them that the said premises were built after September 1947, and that the defendant first came on to the said premises in 1957. It was then up to the defendant to prove that he occupied the said premises prior to September 1947, as alleged by him. This the defendant had failed to do.

The trial Judge dealt exhaustively with the evidence adduced by the defendant in his Grounds of Decision and he said:

> It would appear then that the story narrated by the defendant and his witnesses was conjured up solely for the purpose of showing that the premises were already in existence before 7 September 1947 and hence rent-controlled. In view of my findings on the facts and on a preponderance of evidence, I was not satisfied, that the premises are subject to the provisions of the Act and that the defendant is entitled to protection thereunder. In all probabilities they were built in or before 1957 but certainly not before 1947.

We saw no reason to interfere with the findings of the trial Judge.

For these reasons we allowed the appeal.

Also found at [1983] 1 CLJ 104